

NTSB Order No. EA-4902

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 16th day of July, 2001

Respondent .

### OPINION AND ORDER

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

Regulations ("FAR," 14 C.F.R. Part 91).<sup>2</sup> The Administrator in her appeal contends that the law judge erred in reducing the sanction from revocation to a certificate suspension, and the respondent in his appeal contends that the law judge should not have found him in violation of either of the regulations cited by the Administrator. We deny both appeals.<sup>3</sup>

The Administrator's June 28, 2000 Emergency Order of Revocation alleges the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Airline Transport Pilot Certificate No. 580049077.
2. On or about March 25, 2000, you acted as first officer of civil aircraft N614AS, a Boeing Model 737-700, operated as Alaska Airlines' Flight 506 from Portland, Oregon to San Jose, California.
3. Incident to that flight, and shortly after the aircraft had climbed to approximately 14,000 feet, the oxygen masks in the passenger compartment deployed.
4. The passengers used the oxygen masks, depleting the emergency oxygen supply in the main cabin.
5. Following that incident, you descended the aircraft to 10,000 feet and checked the pressurization system to determine the cause of the deployment of the oxygen masks.

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<sup>2</sup>FAR sections 91.7 and 91.13(a) provide as follows:

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

**§ 91.13(a) Careless or reckless operations.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>The parties have filed reply briefs opposing each other's appeals.

6. You then climbed the aircraft to flight level 410 and continued the flight to San Jose.
7. You operated the aircraft at flight level 410 when there was insufficient emergency oxygen for the passengers in the event of a loss of cabin pressurization.

The law judge concluded that these allegations were established by the Administrator's evidence and found that they supported the charges that respondent had endangered the lives and property of others by operating an unairworthy aircraft. We agree with that conclusion and finding.

In an enforcement proceeding involving the pilot-in-command of the Alaska Airlines flight at issue in this case, the same law judge determined that an emergency revocation of the captain's airline transport pilot certificate should be affirmed on a record that supported a finding that the captain had directed that the aircraft be taken to flight level 410 with full knowledge that no supplemental oxygen would be available for the passengers or cabin crew in the event of a depressurization. The Board denied the captain's appeal from that determination. See Administrator v. Reese, NTSB Order EA-4896 (served May 21, 2001).

We observed in that case that the captain had:

knowingly and unnecessarily exposed eighty-eight passengers and three cabin crewmembers to the significant likelihood of sudden, serious brain injury or death in the event the aircraft experienced another pressurization problem. This was not the decision of an individual who can be invariably expected to discharge properly the responsibility of safeguarding the lives of those he has been entrusted to deliver safely.

Although the law judge sustained the charges against the respondent in this proceeding, as he had against the pilot-in-

command in the case he had heard earlier, he believed that the seriousness of the first officer's offenses was blunted by his professed lack of knowledge that those in the cabin had used up their supplemental oxygen supply in connection with the aircraft's initial pressurization problem. The law judge also appears to have discounted respondent's culpability because of his claim that he had relied on the captain's advice to the effect that everything was fine in the cabin and, thus, they could continue on their trip as though nothing untoward had occurred. The Administrator's appeal does not establish error in the law judge's assessment of the record. We will therefore not disturb his judgment that a four-month suspension of respondent's ATP certificate would be a sufficient sanction.

Finally, we find no merit in respondent's arguments that the violations against him should be dismissed on the ground that his actions were prudent based on the information the captain made available to him. Because the respondent shared responsibility for ensuring the aircraft's airworthiness and could easily have found out the situation in the main cabin on his own, the law judge correctly rejected the respondent's defense of reasonable reliance. See, e.g., Administrator v. Fay and Takacs, NTSB Order No. EA-3501 (1992).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is denied;
2. The respondent's appeal is denied; and
3. The initial decision is affirmed.

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.